

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROBERT DeHERRERA,

Plaintiff Pro Se,

vs.

No. CIV 99-0215 JC/WWD

ROY KROPINAK,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Plaintiff's Motion to Appeal Court's Decision Denying Plaintiff's Amended Complaint filed October 19, 1999 (*Doc. 30*). The Court has reviewed the motion, the order of the Magistrate Judge and the relevant authorities. The Court finds that the motion will be granted and therefore, the Order of the Magistrate Judge filed October 7, 1999 (*Doc. 27*) will be vacated.

Plaintiff *pro se* DeHerrera filed a Motion to Amend the Front Page of Proposed Amended Complaint on September 2, 1999 (*Doc. 24*). Plaintiff also filed a Motion to Amend Complaint on August 26, 1999 (*Doc. 23*). In an Order dated October 7, 1999, Chief Magistrate Judge Deaton denied both motions, as well as Plaintiff's Motion for Order Directing the Marshal to Serve Complaint, filed September 27, 1999 (*Doc. 26*). Plaintiff now appeals that Order. *See* Order filed October 7, 1999 (*Doc. 27*).

The Motions to Amend concern two different aspects of Plaintiff's initial Complaint. First, Plaintiff sought to amend the title of his lawsuit to reflect the fact that all Defendants except Kropinak

have been dismissed through settlement. *See* Motion to Amend the Front Page of Proposed Amended Complaint, filed on September 2, 1999 (*Doc. 24*). I agree with the Magistrate Judge that there is no need to amend the complaint in such a way, since Kropinak was named in both capacities in the initial complaint and has not been dismissed from the case. Therefore, this order affirms the decision of the Magistrate Judge denying Plaintiff's Motion to Amend the Front Page of Proposed Amended Complaint, filed September 2, 1999 (*Doc. 24*).

Second, Plaintiff seeks leave to amend the body of the complaint. *See* Plaintiff's Motion to Amend Complaint, filed August 26, 1999 (*Doc. 23*). While the Magistrate Judge held that Plaintiff's proposed amended complaint contains no changes to the initial complaint, I find that the proposed amended complaint includes five additional "counts" against Kropinak. Within the additional counts, Plaintiff provides additional facts to support the Eighth Amendment violations set forth in the initial complaint. However, although the "counts" are enumerated as additional claims against Defendant, in essence the proposed amended complaint does not set forth any new grounds for relief. In fact, Plaintiff appears to retreat from the initial complaint in that he no longer seeks redress under the Fourth, Fifth, and Fourteenth Amendments.

Pleadings filed *pro se* are held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520-21, (1972). The *Haines* rule applies to "all proceedings involving a pro se litigant." *Hall v. Bellmon*, 935 F.2d 1106, 1110 n.3 (10th Cir.1991). Because of the flexibility afforded *pro se* litigants, I believe that the additional facts set forth in Plaintiff's proposed amended complaint are sufficient to warrant granting Plaintiff's Motion in this case. Because no additional claims are brought, granting the Motion will have little or no prejudicial effect on Defendant Kropinak and may in fact aid both parties in the efficient disposition of this case.

Finally, Plaintiff's Motion for Order Directing the Marshal to Serve Complaint, filed September 27, 1999 (*Doc. 26*), will be denied. Defendant filed a waiver of service rendering the issue moot. *See* Waiver of Service, filed September 16, 1999 (*Doc. 25*).

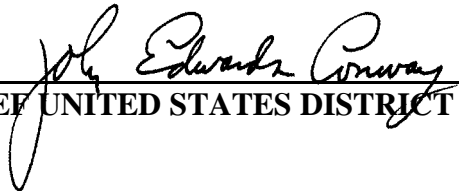
Wherefore,

IT IS ORDERED that the Magistrate Judge's Order, filed October 7, 1999 (*Doc. 27*), is **vacated** as to Plaintiff's Motion to Amend Complaint (*Doc. 23*). No further modification to the Magistrate Judge's Order (*Doc. 27*) is ordered.

IT IS FURTHER ORDERED that Plaintiff's Motion to Appeal Court's Decision Denying Plaintiff's Amended Complaint, filed October 19, 1999 (*Doc. 30*), is **granted**. Plaintiff shall file an Amended Complaint within 30 days of this order.

IT IS FINALLY ORDERED that Plaintiff's Motion for Order Directing the Marshal to Serve Complaint, filed September 27, 1999 (*Doc. 26*), is **denied** as moot.

DATED this 9th day of November, 1999.



CHIEF UNITED STATES DISTRICT JUDGE